ILLINOIS POLLUTION CONTROL BOARD
June 7, 2012

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 04-16
	)	(Enforcement - Air)
PACKAGING PERSONIFIED, INC.,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

This is an enforcement action brought by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), against Packaging Personified, Inc. (Packaging). Today's order denies the People's motion for reconsideration of the Board's March 1, 2012 order and terminates the stay of this proceeding issued by order of May 17, 2012. The parties are therefore directed to supplemental hearing and briefing on penalty in accordance with the Board's March 1, 2012 order. The record will close, however, by December 4, 2012, which is the 180th day after the date of this order. The stay of the Board's September 8, 2011 order remains in effect pending final Board action.

Below, the Board first provides an abbreviated procedural history of this case. The Board then summarizes the People's motion for reconsideration and Packaging's response, after which the Board analyzes and rules upon the motion. The Board concludes with a short discussion of the supplemental hearing and briefing.

PROCEDURAL HISTORY

This action was initiated on August 5, 2003, when the People filed an eight-count complaint against Packaging, alleging violations at the company's polyethylene and polypropylene film processing and printing facility. The facility is located at 246 Kehoe Boulevard in Carol Stream, DuPage County. The People's amended 12-count complaint was accepted on August 18, 2005. The Board issued its final opinion and order on September 8, 2011, finding that Packaging violated numerous air pollution control requirements, including the "flexographic printing rule" (35 Ill. Adm. Code 218.401), and imposing a $456,313.57 civil penalty. *See* People v. Packaging Personified, Inc., PCB 04-16, slip op. at 43-44 (Sept. 8, 2011).

In an order of March 1, 2012, the Board denied in part and granted in part Packaging's motion for reconsideration of the Board's September 8, 2011 decision. In the March 1, 2012 order, the Board also, on its own motion, directed that the parties return to hearing solely to address a discrete "economic benefit" matter concerning penalty, to be followed by briefing. The Board instructed the hearing officer to close the record by August 28, 2012, the 180th day after March 1, 2012. The Board's March 1, 2012 order stated that "[a]fter the record closes, the

Board, on reconsideration, will issue a supplemental opinion and order setting forth its reasoning for either retaining or modifying the $456,313.57 penalty imposed upon Packaging." Packaging, PCB 04-16, slip op. at 18 (Mar. 1, 2012). The March 1, 2012 order also provided that the Board's September 8, 2011 order remains stayed pending final Board action. *Id*.

On March 28, 2012, the People filed a motion for reconsideration of the March 1, 2012 order (Mot. Rec.). On April 13, 2012, the People filed a motion to stay the proceeding until the Board addresses the People's motion for reconsideration. On April 16, 2012, Packaging filed a response opposing the People's motion for reconsideration (Resp. Rec.); a response opposing the People's motion for stay; and a motion for a scheduling order to meet the August 28, 2012 record-closing deadline.

In a May 17, 2012 order, the Board granted the People's motion for stay of the proceeding until the Board issues an order addressing the People's motion for reconsideration. The Board stated:

> When the Board issues that order, the Board will, if appropriate, establish a new deadline for closing the record. The Board therefore denies Packaging's motion to issue an order adopting the company's proposed schedule for record completion. The Board's September 8, 2011 order continues to be stayed pending final Board action. Packaging, PCB 04-16, slip op. at 4 (May 17, 2012).

Today's order rules upon the People's motion for reconsideration, terminates the stay of this proceeding issued on May 17, 2012, and establishes a new deadline for record closing after the supplemental hearing. The stay of the Board's September 8, 2011 order continues to be in effect pending final Board action.

SUMMARIES

The People's Motion to Reconsider

In their motion for reconsideration, the People maintain that the Board, in the March 1, 2012 order, erred in applying existing law. Mot. Rec. at 1. The People argue that the Board "misapplied the term 'compliance'" in Section 42(h)(3) of the Environmental Protection Act (Act) (415 ILCS 5/42(h)(3) (2010)) "by allowing argument on the hypothetical non-operation of Press No. 4." *Id*. at 2. The People quote the flexographic printing rule in part:

> c) Capture System and Control Device Requirements
>
> 1) Prior to August 1, 2010, *no owner or operator* of a subject flexographic or rotogravure printing line equipped with a capture system and control device *shall operate the subject printing line* unless the owner or operator meets the requirements in subsection (c)(1)(A)(i), (c)(l)(A)(ii), or (c)(1)(A)(iii), as well as subsections (c)(1)(D), (c)(5), and (c)(6). *Id*. at 3 (quoting 35 Ill. Adm. Code 218.401(c)(1)) (emphasis by the People).

The People argue that because Section 218.401(c)(1) "prohibits *operation* without [volatile organic material (VOM)] control," "any 'lowest cost alternative for achieving compliance' used in an economic benefit estimate *must* be based on a VOM capture and control device for an operating Press No. 4." *Id*. at 3-4 (emphasis by the People). According to the People, "as a matter of law," the "hypothetical *non-operation* of Press No. 4 cannot be 'compliance'" because "[a]n emission unit cannot be in 'compliance' with a regulation that does not apply to it." *Id*. at 4-5 (emphasis by the People).

Next, the People argue that the Board erred in "implicitly finding that Press No. 5 could be deemed compliant, despite the absence of the compliance demonstration required by the Board regulations." Mot. Rec. at 2. According to the People:

> By sending the parties to a second hearing on this issue, the Board implies that a compliance demonstration can be satisfactorily made without testing in accordance with the Part 218 regulations. However, such a finding would violate the Board regulations, and the Board's acceptance of this theory of compliance is in error. *Id*. at 6.

Because "[i]t is not possible to go back to the year 1995 and perform compliance testing on Press No.5," the People assert that "there is no way to demonstrate the compliance of Press No. 5 in 1995." *Id*. at 9. In short, press 5 cannot be "deemed 'retroactively' compliant." *Id*.

Finally, the People argue that the Board's ruling, "by allowing extensive consideration of hypothetical compliance options," conflicts with the Board's findings in People v. Panhandle Eastern Pipe Line Co., PCB 99-191 (Nov. 15, 2001). Mot. Rec. at 2. According to the People, "Panhandle argued that it *could have* installed control equipment at a much lower cost during a 1988 maintenance shutdown, and therefore realized no economic benefit whatsoever from avoiding NO_x [nitrogen oxides] control for nine years," but "[t]he Board summarily rejected Panhandle's 'hypothetical compliance' argument." *Id*. at 2 (emphasis by the People). Stressing that Packaging "*did* operate Press No.4 from 1995 until 2002, and did *not* demonstrate compliance on Press No. 5," the People assert that the Board should reject Packaging's claims that the company "'could have not operated Press No. 4'" and "'could have demonstrated compliance on Press No. 5'." *Id*. at 11-12 (emphasis by the People). The People equate hypothetical non-operation with "'hypothetical non-violation,'" which the People assert requires the Board to "ignore both a Respondent's operating violations and the cost saving resulting from these violations." *Id*. at 14.

The People maintain that allowing a "'hypothetical non-operation' theory to virtually eliminate Packaging's economic benefit would compromise the deterrent effect of civil penalties." Mot. Rec. at 12. According to the People, if the Board accepts Packaging's argument:

> recovery of economic benefit from violations of the Act will become impossible. Any Respondent caught operating in violation will argue that they *could have* shut

> down noncompliant equipment, and therefore they realized no economic benefit. *Id*. at 12 (emphasis by the People).

Packaging's Response in Opposition

Packaging first asserts that all arguments made by the People in the motion for reconsideration can be included in the People's post-hearing briefs and timely considered by the Board after the record closes. Resp. Rec. at 1-2. Packaging urges the Board to "await consideration" of the People's motion for reconsideration until that time. *Id*. at 2; *see also id*. at 4 ("defer consideration . . . until after the supplemental evidentiary hearing").

Addressing the arguments of the People's motion, Packaging agrees that the flexographic printing rule would not apply to a non-operational press 4. However, Packaging points to the People's acknowledgment that "a shut down Press 4 would not be in 'noncompliance.'" Resp. Rec. at 2, quoting Mot. Rec. at 5. Packaging asserts that there is no "third category of compliance," but rather just compliance or noncompliance. Resp. Rec. at 3. According to Packaging, it is not surprising that the People cite "no support for the proposition that permanently shutting down non-compliant equipment or otherwise removing such equipment from the applicability of a rule is not an acceptable method to achieve compliance." *Id*. at 2-3. If a shut down press 4 were "not in noncompliance," Packaging continues, then logically the press would be in compliance. *Id*. at 3. Packaging maintains that "the earlier shut down of Press 4 as one component of a hypothetical compliance scenario" is an appropriate consideration for the Board's economic benefit determination. *Id*.

Packaging also disagrees with what it characterizes as the People's position that "only the more expensive alternative of achieving compliance" for press 5 can be considered for purposes of the economic benefit determination. Resp. Rec. at 3. According to Packaging, "the statutory command" that economic benefit must be determined by the lowest cost alternative for achieving compliance does not permit the "disregard of a lower cost alternative" just because a lower cost alternative would "lack the same deterrent effect as an economic benefit determination based upon the alternative actually pursued by the respondent to achieve compliance." *Id*. Whether press 5 "could have been brought into compliance," continues Packaging, "by means of a stack test conforming to the Board's stack test protocol is an evidentiary question." *Id*.

The People's motion "confuses the Board's *violation* determination with the Board's *economic benefit* determination," according to Packaging. Resp. Rec. at 4 (emphasis by Packaging). Packaging asserts that the latter is part of the Board's penalty determination, which is separate from the Board's violation determination. *Id*. Packaging argues that an economic benefit determination differs from a violation determination "precisely because the economic benefit determination is based upon costs respondent 'would have' incurred in a 'hypothetical' scenario in which respondent timely complied with the Board Rules." *Id*. Packaging concludes:

> Further, consideration of "hypothetical" compliance scenarios for purposes of the Board's economic benefit determination is mandated by the statutory language that "the economic benefit shall be determined by the lowest cost alternative for achieving compliance." 415 ILCS 5/42(h). The legislature's use of the word

"alternative" necessarily contemplates that more than one scenario to achieve compliance may be considered. *Id*.

DISCUSSION

The Board first discusses and rules upon the People's motion for reconsideration, after which the Board addresses the supplemental penalty hearing and briefing

The People's Motion for Reconsideration

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902 ("In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error."). A motion to reconsider may specify evidence in the record that was overlooked. *See* People v. Prior, PCB 02-177, slip op. at 2 (July 8, 2004).

The People's motion for reconsideration does not contest, and today's order therefore does not revisit, the Board's March 1, 2012 determination that there was a reasonable explanation for Packaging's failure to present the company's new economic benefit position, that Packaging did not forfeit the new position, that the Board should exercise its discretion to take into account Packaging's new position in ruling upon Packaging's motion for reconsideration, or that the Board overlooked the "Trzupek Testimony" and the "Shutdown/Shift Evidence" with respect to Section 42(h)(3) of the Act (415 ILCS 5/42(h)(3) (2010)). Packaging, PCB 04-16, slip op. at 11-16 (Mar. 1, 2012).

Instead, the People seek reconsideration of the Board's March 1, 2012 order on the ground that the Board "erred by directing a hearing on issues which cannot support a legitimate "'lowest cost estimate for compliance.'" Mot. Rec. at 2; *see* Packaging, PCB 04-16, slip op. at 16-18 (Mar. 1, 2012). To most meaningfully review the People's allegations of error in applying existing law, the Board declines Packaging's request to defer ruling upon the People's motion for reconsideration until after the supplemental hearing.

The People argue that in the March 1, 2012 order, the Board (1) misapplied the term "compliance" in Section 42(h)(3) by inviting argument on the hypothetical "non-operation" of press 4, (2) erred by implicitly finding that press 5 could be deemed in "'retroactive compliance,'" and (3) ran afoul of the Board's Panhandle precedent "by allowing extensive consideration of hypothetical compliance options" to the detriment of the deterrent effect of civil penalties. Mot. Rec. at 2, 13-14; *see* People v. Panhandle Eastern Pipe Line Co., PCB 99-191 (Nov. 15, 2001). The Board addresses each of these arguments in turn.

"Non-Operation"

Section 42(h) of the Act (415 ILCS 5/42(h) (2010)) reads in pertinent part as follows:

> In determining the appropriate civil penalty to be imposed . . . , the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:
>
> ***
>
> (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
> *** 415 ILCS 5/42(h), (h)(3) (2010).[1]

Packaging's new economic benefit calculation is based upon the position that the lowest cost alternative for Packaging to comply with the flexographic printing rule would have been to shift all of press 4's production to press 5 and then demonstrate press 5's compliance with the rule's capture and control requirements. The People argue that because a nonexistent or inoperable press cannot comply with a rule that does not apply to it, the "non-operation" of press 4, resulting in the inapplicability of the flexographic printing rule to press 4, cannot be a manner to achieve "compliance." The People maintain that "an *operating* press No. 4 could only comply through VOM control" and that the cessation of press 4's operations would have "absolutely no bearing on Respondent's compliance status." Mot. Rec. at 13 (emphasis by the People).

In its September 8, 2011 order, the Board found, and the People do not dispute, that shutting down press 4 in 2002 ended press 4's noncompliance. *See* Packaging, PCB 04-16, slip op. at 39. The Board appreciates the People's distinction between (1) a noncompliant printing line that is brought into compliance with the flexographic printing rule through the addition of a capture system and control device and (2) a noncompliant printing line that is shut down so as to no longer be subject to the flexographic printing rule. However, the Board finds that in applying this distinction to the facts of this case, the People read limitations into Section 42(h)(3) of the Act. The People interpret Section 42(h)(3) as, in effect, requiring an assessment not of Packaging's "lowest cost alternative for achieving compliance," but rather Packaging's "lowest cost alternative for achieving compliance *on each of the noncompliant printing lines*." At this time, the Board declines to find, as a matter of law, that if two printing lines at a facility are operating in violation of the flexographic printing rule, then shutting down one line and shifting its production to the other cannot be considered *part* of any "alternative for achieving compliance" with the rule. 415 ILCS 5/42(h)(3) (2010).

The People also make a broader argument about "non-operation": "If 'hypothetical non-operation' (i.e. 'hypothetical non-violation') is accepted by the Board as a compliance alternative, future Respondents will be able to completely nullify recovery of real, demonstrable,

[1] Further, "the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation," except in narrow circumstances inapplicable here. 415 ILCS 5/42(h) (2010).

avoided compliance expenditures" by merely stating that they realized no economic benefit because "they *could have* shut down noncompliant equipment." Mot. Rec. at 12, 14 (emphasis by the People). The Board recognizes that accepting the cessation of operation of *all* noncompliant equipment, *without more*, as a "compliance" alternative would risk rendering Section 42(h)(3) meaningless.[2] In its March 1, 2012 order, however, the Board directed that one of the items to be addressed at the supplemental hearing is whether "press 5 and the tunnel dryer system [would] have accommodated the entire production of both press 4 and press 5 from March 15, 1995 to February 26, 2004." Packaging, PCB 04-16, slip op. at 17 (Mar. 1, 2012). Packaging is not asserting that it could have simply shut down *all* of its printing lines. Packaging's proposed "lowest cost alternative for achieving compliance" is premised upon (1) shutting down press 4, (2) having press 5 absorb press 4's work, and (3) performing a formal stack test on the press 5 tunnel dryer system to demonstrate *compliance* with the flexographic printing rule.

The Board finds that it did not err in interpreting the term "compliance" in Section 42(h)(3).

"Retroactive" Compliance

The Board agrees with the People that "the testing requirements are the *sole method* for demonstrating compliance" with the capture and control requirements of the flexographic printing rule. Mot. Rec. at 7 (emphasis by the People). However, the People's argument about deeming press 5 to be "'retroactively' compliant" conflates the distinct concepts of violation and civil penalty. *Id*. at 9. The Board did not, "implicitly" or otherwise, find that press 5 could now be "deemed compliant." Mot. Rec. at 2. On the contrary, the March 1, 2012 order stated:

> With no formal compliance demonstration of the press 5 tunnel dryer, the Board found [in its September 8, 2011 decision] that press 5 was in violation of the flexographic printing rule until the formal stack test of the [regenerative thermal oxidizer (RTO)] was performed. Order at 39. *Nothing in today's order alters that ruling*. Packaging, PCB 04-16, slip op. at 15, n.10 (Mar. 1, 2012) (emphasis added).

Accordingly, the supplemental hearing was not ordered to receive evidence on whether press 5 was in violation. Press 5 was already found to have been in violation because it neither used compliant ink nor was demonstrated to be alternatively compliant through either weighted averaging or capture and control. *See* Packaging, PCB 04-16, slip op. at 22-23 (Sept. 8, 2011). A formal stack test was required to achieve compliance with the flexographic printing rule through capture and control. *See* 35 Ill. Adm. Code 218.401(c)(6). Evidence on whether a formal stack test of the press 5 tunnel dryer system *would have* demonstrated compliance, a subject of the supplemental hearing, may bear upon the lowest cost compliance alternative,

[2] In a given case, ceasing the operation of all noncompliant equipment *and* replacing it with compliant equipment might constitute the lowest cost compliance alternative.

which is a matter of penalty, not violation. *See* Packaging, PCB 04-16, slip op. at 17 (Mar. 1, 2012).[3] The People have not established any error here by the Board in applying the law.

"Hypothetical" Compliance

The People argue that the Board's March 1, 2012 order is inconsistent with the Board's 2001 decision in People v. Panhandle Eastern Pipe Line Co., PCB 99-191 (Nov. 15, 2001). In Panhandle, the calculated economic benefit accrued by the respondent due to the noncompliance of emission units was roughly $500,000, based upon avoided or delayed capital and operating costs for emission controls. *See* Panhandle, PCB 99-191, slip op. at 30-31. The respondent asserted that this amount would be exceeded by the cost of having to "retrofit" the units, *i.e.*, it would be more expensive to add the controls to the operating units than it would have been to install the controls when the units were being constructed. *Id*. at 32. The respondent sought to offset the economic benefit calculation by the greater retrofitting cost. *Id*.

The Board rejected the argument that the Panhandle respondent received no economic benefit from noncompliance, finding under Section 42(h)(3) of the Act that "funds that should be spent on compliance were available for other pursuits." Panhandle, PCB 99-191, slip op. at 32.[4] The Board added:

> Panhandle's retrofit argument also conflicts with the purpose of Section 42(h)(4)—deterring violations. Any extra compliance costs from retrofitting are self-imposed and exist solely because the violator did not pay to comply on time. Applying the retrofit argument could encourage companies to put off compliance or at least not be as diligent as they should be in monitoring compliance—any penalty that a company might face if it gets caught in violation could be diminished because the company did *not* spend money to comply when it should have. The deterrent effect of civil penalties is compromised if the violator gets "credit" for ignoring its legal obligations. *Id*. (emphasis in original)[5]

In addition to Panhandle, the People refer in a footnote to two penalty decisions (Smithfield and Toyal) in which reviewing courts affirmed rejections of attempts by violators to "offset" economic benefits from noncompliance. Mot. Rec. at 13, n.19. In U.S. v. Smithfield Foods, Inc., 191 F.3d 516, 530 (4th Cir. 1999), the Fourth Circuit Court of Appeals held that

---

[3] Also a matter for the supplemental hearing is whether the press 5 tunnel dryer system constituted a "capture system and control device" under 35 Ill. Adm. Code 218.401(c). *See* Packaging, PCB 04-16, slip op. at 17 (Mar. 1, 2012).

[4] In Panhandle, the Board was applying Section 42(h)(3) before the "lowest cost" language was added. *See* Panhandle, PCB 99-191, slip op. at 28.

[5] Section 42(h)(4) of the Act is one of the Section 42(h) penalty factors and reads: "the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act." 415 ILCS 5/42(h)(4) (2010).

where certain capital expenses were not incurred to achieve compliance, the district court correctly declined to credit the violator in the economic benefit calculation of a Clean Water Act penalty. In Toyal America, Inc. v. IPCB and People, 2012 IL App (3d) 100585 at ¶¶ 21, 52, the Third District Appellate Court affirmed the Board's rejection of a "forgone-benefit" credit, which the respondent claimed based upon cost savings that it allegedly would have realized had it complied on time. The Toyal court held:

> [T]he Board explained that allowing a violating entity to offset its economic benefits would undermine the deterrence purpose of the economic benefit penalty because entities that fail to comply with regulations could face no penalty for the economic benefits they gained due to their noncompliance. We agree with this reasoning. *Id*. at ¶ 52.

The Board's Toyal decision relied upon Panhandle in declining to credit the respondent for money it "spent on new oil because of failure to fully avail itself of solvent recovery due to its own compliance delays." People v. Toyal America, Inc., PCB 00-211, slip op. at 60 (July 15, 2010), *aff'd sub nom*. Toyal America, Inc. v. IPCB and People, 2012 IL App (3d) 100585 (affirming $716,440 civil penalty imposed by Board).

The Board finds that the People's motion for reconsideration fails to state what constitutes the Panhandle or Toyal economic benefit "credit" that would undermine deterrence in this case. Nor does the motion identify how Packaging's new economic benefit calculation otherwise reflects any improper "offset," such as that sought by the violator in Smithfield. Nothing in the March 1, 2012 order indicated that the Board would permit any such credit or offset to diminish economic benefit under Section 42(h)(3) of the Act. The supplemental hearing directed by the Board is to address, among other things, costs avoided or delayed. *See* Packaging, PCB 04-16, slip op. at 17 (Mar. 1, 2012). Further, the Board's penalty determinations take into account all applicable factors of Section 42(h) (415 ILCS 5/42(h) (2010)), including deterrent effect under Section 42(h)(4) (415 ILCS 5/42(h)(4) (2010)).

Next, the Board finds that its determination under Section 42(h)(3) (415 ILCS 5/42(h)(3) (2010)) is not limited to considering the compliance alternative *actually implemented* by the respondent. This narrow construction is not supported by the plain language of Section 42(h)(3): "the economic benefits shall be determined by the lowest cost alternative for achieving compliance." 415 ILCS 5/42(h)(3) (2010). Moreover, a respondent often will not have implemented any compliance alternative by the time of the enforcement action. Such were the circumstances in Panhandle. *See* Panhandle, PCB 99-191, slip op. at 27. Here, the Board based its economic benefit determination upon a "hypothetical" two-unit RTO. *See* Packaging, PCB 04-16, slip op. at 38-40 (Sept. 8, 2011). The People support that ruling in asking the Board to "reinstate its September 8, 2011 decision." Mot. Rec. at 14. The Board finds that determining the lowest cost "alternative" for a respondent to comply may include consideration of hypothetical compliance alternatives, where supported by evidence.

Finally, because Section 42(h)(3) contemplates considering alternatives for "achieving compliance," the alternatives may involve what the People characterize as "hypothetical non-violation" scenarios. A calculation of the economic benefit accrued typically includes

compliance costs avoided or delayed by a respondent from the start of the noncompliance period. *See*, *e.g.*, Packaging, PCB 04-16, slip op. at 21, 39 (Sept. 8, 2011); Toyal, PCB 00-211, slip op. at 6, 58-60 (July 15, 2010). Far from being ignored, "Respondent's operating violations" as found by the September 8, 2011 order were unaltered by the March 1, 2012 order, and "the cost saving resulting from these violations" is a matter for the supplemental hearing. Mot. Rec. at 14.

The Board finds that the People's motion to reconsider has identified no "irreconcilable conflict" between the Board's March 1, 2012 order and the Board's Panhandle decision. Mot. Rec. at 10.

Board Ruling

For the reasons provided above, the Board finds that the People have not established any error by the Board in applying the law in the March 1, 2012 order. The Board therefore denies the People's motion for reconsideration. Though the People's motion has failed to convince the Board that it erred in ordering the supplemental hearing and briefing, nothing in today's order precludes the People from arguing their motion's positions on the merits through these supplemental proceedings.

Supplemental Penalty Hearing and Briefing

In accordance with the Board's March 1, 2012 order, the Board directs the hearing officer to proceed to the supplemental hearing and briefing on penalty. *See* Packaging, PCB 04-16, slip op. at 17-18 (Mar. 1, 2012). However, the record-closing deadline is no longer August 28, 2012, the 180th day after March 1, 2012. *Id*. at 18. Over three months have elapsed since the issuance of the March 1, 2012 order. During this timeframe, the parties' resources have been devoted largely if not entirely to the motions ruled upon by the Board's orders of May 17, 2012 and today. Further, this proceeding has been stayed for the last several weeks. Under these circumstances, the Board again provides the parties with 180 days for record completion. Accordingly, this record will close no later than December 4, 2012, which is the 180th day after the date of today's order.

As stated in the Board's March 1, 2012 order, "[a]fter the record closes, the Board, on reconsideration, will issue a supplemental opinion and order setting forth its reasoning for either retaining or modifying the $456,313.57 penalty imposed upon Packaging." Packaging, PCB 04-16, slip op. at 18 (Mar. 1, 2012). The stay of the Board's September 8, 2011 order remains in effect pending final action by the Board.

CONCLUSION

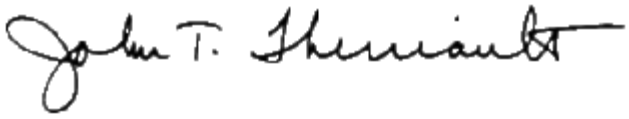
The Board denies the People's motion for reconsideration of the March 1, 2012 order. The stay of this proceeding issued on May 17, 2012, is terminated. As provided above, the Board directs the hearing officer to proceed to the supplemental hearing and briefing on penalty. This record will close no later than December 4, 2012. The September 8, 2011 order continues

to be stayed pending final Board action.

IT IS SO ORDERED.

Board Members D. Glosser and C.K. Zalewski dissented.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2012, by a vote of 3-2.



John Therriault, Assistant Clerk
Illinois Pollution Control Board